



**OFFICE OF INSPECTOR GENERAL**  
**Washington, D.C. 20554**  
**March 15, 2012**

Pittsburg Unified School District  
Ms. Linda K. Rondeau  
Ms. Cecile Nunley  
2000 Railroad Avenue  
Pittsburg, CA 94565

Dear Ms. Rondeau and Ms. Nunley:

The Federal Communications Commission ("FCC") Office of Inspector General ("OIG") audited Pittsburg Unified School District's, Beneficiary Number 144213, compliance with the FCC's rules and orders governing the Schools and Libraries Universal Service Support Mechanism. We specifically looked at disbursements of \$ 2,153,888 made from the Universal Service Fund during the fiscal years ended June 30, 2008 and June 30, 2009 under Funding Request Number 1607326.

Attached is the final report of the audit conducted by our office. It incorporates your written response to the draft report and the response received from Universal Service Administrative Company.

The OIG performed this audit consistent with its authority under the Inspector General Act of 1978, as amended, including, but not limited to section 2(1) and 4(a)(1). It is not intended as a substitute for any agency regulatory compliance review or regulatory compliance audit.

If you have questions, or need additional information, please contact Larry Rufai, Auditor-In-Charge at 202-418-1331 or [Larry.Rufai@fcc.gov](mailto:Larry.Rufai@fcc.gov), Beth Engelmann, Audit Director, USF Program at 202-418-1448 or [Beth.Engelmann@fcc.gov](mailto:Beth.Engelmann@fcc.gov), or me at 202-418-0474 or [Gerald.Grahe@fcc.gov](mailto:Gerald.Grahe@fcc.gov).

Sincerely,

A handwritten signature in dark ink, appearing to read "Gerald T. Grahe". The signature is fluid and cursive, with a large loop at the end.

Gerald T. Grahe  
Assistant Inspector General  
for USF Oversight

Attachment - Final Audit Report 10-AUD-05-03

# FEDERAL COMMUNICATIONS COMMISSION

## OFFICE OF INSPECTOR GENERAL



Final Report  
Compliance with FCC's Rules  
Pittsburg Unified School District  
Beneficiary Number 144213

Report No. 10-AUD-05-03  
March 15, 2012

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## **Executive Summary**

Our audit disclosed that Pittsburg Unified School District (“PUSD” or “District”) did not comply with the Federal Communications Commission (“FCC”) rules regarding (1) application matters, (2) procurement and service provider selection matters, (3) asset and inventory records, and (4) receipt of services and reimbursement matters relative to disbursements and corresponding Funding Request Number (“FRN”) 1607326 made from the Universal Service Fund (“USF”) during the Fiscal Years ending June 30, 2008 and June 30, 2009 (“Fiscal Years 2008 and 2009”).

For the internal connections application, the District failed to submit a signed and approved contract prior to the submission of its FCC Form (“Form”) 471, Services Ordered and Certification Form. The District failed to evaluate the cost effectiveness of the single bid it accepted under FRN 1607326 for internal connections. Asset and inventory records were inadequate to locate E-Rate equipment and ensure equipment was received and installed prior to USF disbursements. Substituted equipment was not reported to Universal Service Administrative Company (“USAC”). The District certified receipt of equipment and USF payments were made without verifying the amount of cabling received. We determined the service provider over-charged USF for cabling costs. In addition, telephone maintenance services not ordered or approved were paid by USF, along with cabling installed in an ineligible facility. Finally, some of the District’s invoices for its share of the payment for cabling were not paid on time. Based on our findings, we recommend recovery of the total disbursement under FRN 1607326 in the amount of \$2,153,888.<sup>1</sup>

## **Background**

PUSD is a public school district located in Pittsburg, California in Contra Costa County. The school district serves over 9,500 students in pre-kindergarten through twelfth grade and adult education. The district is comprised of eight elementary schools, two middle schools and two high schools. The district received E-Rate funds at an urban discount rate of 89% for the Fiscal Years 2008 and 2009 under audit.

## **Scope and Methodology**

The objective of the audit was to assess PUSD’s, Beneficiary Number 144213, compliance with applicable requirements of 47 C.F.R Section 54 of the FCC’s rules and related orders, regarding internal connections FRN 1607326 USF disbursements of \$2,153,888 during the Fiscal Years ending June 30, 2008 and June 30, 2009 and relative to its Funding Year (“FY”) 2007 application.

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<sup>1</sup> Since the start of the audit, commitments and disbursements were adjusted due to a service substitution (see “Other Matter to be reported” Page 21 of this report).

We conducted this performance audit in accordance with generally accepted government auditing standards contained in *Government Auditing Standards, July 2007 revision* (GAO 07-731G), issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis of our findings and conclusions based on our audit objectives. The audit included tests of controls necessary to satisfy the audit objective. Because our review of controls was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. Our examination does not provide a legal determination on the PUSD's compliance with specified requirements.

This audit report is provided to FCC management and to USAC so that it may fulfill its operational responsibilities as directed by FCC.

**Finding 1: Contract Not in Place Prior to Form 471**

**Condition:** PUSD submitted the Form 471 number 580458 on February 7, 2007 without having a contract with the service provider selected for FRN 1607326. Upon request for the contract, PUSD provided a written Letter of Intent ("LOI") signed by the service provider and PUSD, dated February 2, 2007. The LOI included an attached agreement dated January 24, 2007 that was titled "Agreement To Be Submitted with Pricing Package" ("Agreement"). The Agreement was signed by the service provider only and included an unsigned signature block for an incorrect district representative. The Agreement described the scope of work to be performed by the service provider and the compensation of \$2,521,465 to be given by PUSD, but was conditional based on future actions.

During our audit, but after services were delivered and USF funds were expended, PUSD submitted the Agreement to its Board; it was approved on August 11, 2010. PUSD also provided an opinion dated November 30, 2011 by its legal counsel stating that the Board could approve the contract for past services provided by the service provider to PUSD.

Regardless of the recent approval of the contract, PUSD failed to sign a contract prior to submitting a Form 471. The LOI included conditions of "final board approval of the 2007-08 budget and contract confirmation by the 2007-08 school board." Per the LOI, "this letter of intent was intended to secure the scope of work and/or equipment as attached." The attachment referenced was the agreement dated January 24, 2007. Because the LOI was conditional and the Agreement was not signed by the District, the Agreement did not satisfy the requirement for a signed contract prior to the submission of the Form 471.

**Criteria:** Per the October 1, 2007 revision of the C.F.R. 47 C.F.R. § 54.504 (c) and the FCC's Fifth Report and Order, FCC 04-190 at ¶ 68, applicants are required to sign a contract for eligible services prior to submitting a completed Form 471.

**Cause:** PUSD submitted the Letter of Intent (LOI) in place of a valid contract. PUSD and their consultants believed that the LOI was sufficient to meet contract requirements.

**Effect:** USF monies were disbursed despite no mutually binding contract as required under FCC rules. As a result, there existed potential risk of service provider non-performance and the District would not have legal remedy.

**Recommendation:** We recommend PUSD follow FCC rules applicable to procurement prior to submitting a Form 471. We also recommend USAC seek recovery of \$2,153,888 disbursed from the USF.

**Beneficiary Response:**

1. The Draft Audit Report (DAR) concludes the District “submitted the Form 471 on February 7, 2007 without having a signed contract” prior to submission of the Form 471. This conclusion is incorrect. We note that 47 CFR § 54.504(a) states in pertinent part:

An eligible school ... seeking to receive discounts for eligible services under this subpart, shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator. A commitment of support is contingent upon the filing of an FCC Form 471.

The requirement of having a signed contract was satisfied here in two separate and distinct ways. First, a contract, dated January 7, 2007, was signed by the service provider and submitted to the District before submission of the Form 471. A copy of the contract was referenced in previous correspondence to the FCC and provided to the FCC. (We now understand this contract was prepared by the District’s then E-rate consultant and not by the service provider.)

Second, and contrary to Finding 1, on February 7, 2007, the District signed a letter of intent (“LOI”), executed by a then officer of the District, and signed by the service provider’s VP of Operations regarding the services to be provided. This LOI was a signed agreement between the service provider and District.

For these reasons, we believe the signed contract requirement was sufficiently met and we request that draft Finding 1 be reconsidered and withdrawn.

2. The E-Rate program provides specific guidelines for school districts to apply for funds under the program for the discount plan for school and library telecommunication services (e.g. 47 C.F.R., § 54.504).<sup>2</sup> However, the E-Rate guidelines expressly note that

<sup>2</sup> In particular, school and library applicants must seek competitive bids, by filing the "Description of Services Requested and Certification Form" (Form 470) (47 C.F.R., § 54.504, subd. (a)) and must go through a four week competitive bidding process leading to vendor selection. (47 C.F.R., § 54.504, subd. (b).) The regulations expressly provide that the "competitive bid requirements apply in addition to state

the E-Rate Program regulatory requirements for competitive bidding do not change or preempt state laws governing state contracting requirements with third party vendors.

Nothing in 47 CFR § 54.504(c) requires final approval or ratification of the contract by a school district governing board *before* submission of the Form 471. Indeed, by its express terms 47 CFR § 54.504(c) imposes the basic and important requirement that there must be a signed “contract for eligible services” before submitting the Form 471, but it does not impose any requirement that the signed contract receive final approval or ratification before the Form 471 is submitted.

Additionally, nowhere does the DAR [Draft Audit Report] conclude that an invalid or unenforceable contract exists for E-rate years ending June 30, 2008 and June 30, 2009. Rather, the DAR merely states “[r]egardless of the recent approval of the contract, PUSD failed to sign a contract and obtain Board approval prior to submitting a Form 471.” (DAR, pg. 4.) In essence, the DAR seeks to impose a requirement of final board approval of a contract before submitting the Form 471.

By seeking to impose a requirement of final board approval of a contract before submitting the Form 471; however, the DAR conflicts with the statutory and regulatory requirement that defer to state law on contract approval procedures and requirements under the E-rate Program. Here, the District complied with California law to ratify the contract with the service provider.

More specifically, Section 35160 of the California Education Code (“Education Code”) vests in the governing board the power to “act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.” This includes the power to contract. (Education Code § 17595 *et. seq.*) The power to contract, however, requires adherence to certain statutory procedures. (*Santa Monica Unified School Dist. V. Persh* (1970) 5 Cal.App.3d 945.) These procedures include approval, or ratification, of a contract by a governing board in open session of a public meeting for the contract to be enforceable. (Education Code § 17604.) Education Code section 17596 also permits governing boards to enter into services contracts for periods up to five (5) years. (Other sections of the Education Code authorize longer contracts; however, those sections are inapplicable here.)

By its express terms, Section 17604 of the Education Code vests governing boards with the authority to ratify contracts. The legislature’s use of the word “ratified” in the statute expressly authorizes a governing board to ratify a contract for services that have already begun or to ratify a contract for services already provided. In light of the clear authority to enter into service contracts for up to five (5) years, and the express authority under Section 17604 to ratify contracts, a governing board also has the authority to ratify a

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and local competitive bid requirements and are not intended to preempt such state or local requirements.” All these requirements were met here and are not challenged in the DAR.

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contract for services that have already been delivered to the District, provided the total contract duration, including any period covered by the ratification, does not exceed five (5) years. The DAR does not challenge this conclusion.

On August 11, 2010, less than 5 years after the services were provided, the District's governing board ratified the contract with the service provider. Accordingly, the District complied with California law concerning contracting requirements with third party vendors. We also note the permissive nature of the Education Code gives discretion to a governing board to *not ratify* a contract or agreement that is presented to them as well. In other words, under Section 17604 of the Education Code, there is no mandate that a governing board ratify a contract submitted to them after services have begun or after services are completed. The governing board may elect to not ratify such a contract or not, and in the case where a contract is not ratified, a vendor has no recourse against the District. For all of these additional reasons, we request that draft Finding 1 be reconsidered and withdrawn.

3. In the DAR, the FCC notes "[w]e reviewed Board minutes for 2006 through 2008 and did not see any discussion or any approval of this contract with the service provider." The implication drawn from this statement, set forth under "Cause" in the DAR, is that the "Board did not have the opportunity to review and approve or disapprove this \$2,153,888 procurement." (Pg. 4, DAR.) However, the statement is grossly misleading and the implication drawn from it is wrong.

The DAR completely ignores the fact that the Board had multiple agendaized meetings in early 2007, and before, discussing the E-Rate program and approving E-Rate related contracts, including the following:

- On January 10, 2007, under Action Item B6 – "Agreement with California School Mgmt Technologies for Services Relating to Technology Infrastructure Consulting." On February 28, 2007, under Consent Agenda XI.D – "Agreement for Services with California School Management Group (CSM) for Technology Plan Development."
- On May 9, 2007, under Consent Agenda XI.O – "Agreement with California School Management Group for *E-Rate Services, 2008-2009 and 2009-2010.*" (Emphasis added.)

Accordingly, the Board was well aware of the E-Rate process and had every opportunity to review, approve or disapprove the contract with the E-rate vendor, which contract it ultimately ratified. The failure of the DAR to acknowledge the fact that the Board had multiple meetings related to the E-rate program and its implications undermines draft Finding 1, and we request that draft Finding 1 be reconsidered and withdrawn.

4. The DAR also misstates the District's policy. At page 4 of the DAR, it states "[a]ccording to PUSD's policy which incorporates state code, all anticipated contracts are required to be approved and/or ratified by PUSD's Board and represented in Board minutes, prior to signing a contract with any service provider." (DAR, pg. 4.) The District's policy does not say that. Rather, District Policy ("BP") 3312 Business and Noninstructional Operations, states as follows:

Whenever state law invests the Board of Education with the power to enter into contracts on behalf of the district, the Board may, by a majority vote, delegate this power to the Superintendent or designee. To be valid or to constitute an enforceable obligation against the district, all contracts must be approved and/or ratified by the Board. (Education Code 17604)

As set forth above, the District complied with state law and its own Board policy in ratifying the service provider contract. However, the failure of the DAR to accurately cite the District's board policy further undermines the appropriateness of Finding 1. Therefore, we request that draft Finding 1 be reconsidered and withdrawn.

5. The FCC's Fifth Report and Order, FCC 04-190 (¶68) does not support the DAR conclusion that final board approval of the service provider contract must occur before the Form 471 is submitted. Paragraph 68 of FCC 04-190 states in relevant part "Form 471. Under section 54.504(c) of the Commission's rules, applicants are required to submit a completed FCC Form 471 after signing a contract for eligible services." Nowhere does FCC 04-190 impose a requirement that final board approval of the service provider contract must occur before the Form 471 is submitted.

Additionally, FCC 04-190 goes on to include the recommendations of the changes to the Commissions rules stating in relevant part:

[T]he FCC Form 471 shall be signed by the person authorized to order telecommunications and other supported services for the eligible school ... and shall include that person's certification that ... the entity(ies) has/have complied with program rules as *well as all state and local laws regarding procurement of services*; ....

This statement, including the italicized portion, underscores the deference to state and local law on the contracting requirements and does not impose a requirement that final board approval of the service provider contract must occur before the Form 471 is submitted. Therefore, we request that draft Finding 1 be reconsidered and withdrawn.

6. The FCC's Fifth Report and Order, FCC 04-190 (¶3) also states:

The Administrator reviews the FCC Forms 471 that it receives and issues funding commitment decision letters indicating discounts that the applicant



may receive in accordance with the Commission's rules. Subsequently, pursuant to our rules, the applicant either: (1) pays the bill in full, and seeks reimbursement for discounts from the Administrator via the service or equipment provider, or (2) pays the non-discount portion of the service cost to the service provider, who, in turn, seeks reimbursement from the Administrator for the discounted amount. (Footnote omitted.)

After the District submitted its completed Form 471 form, the Administrator, the SLD nor the FCC notified the District that the Form 471 was not complete, or that the contract submitted was deficient in some manner, until after the services were provided. The Administrator, or SLD, had a responsibility, in reviewing the Form 471, to notify the District that the submission of the Form 471 was incomplete or deficient based upon the position now taken in the DAR by the FCC.

This is not an instance where the District has engaged in any fraud or misrepresentation, yet it is now subject to potential penalty because the FCC has apparently imposed a requirement that final board approval of the service provider contract must occur before the Form 471 is submitted, a requirement the Administrator must not have believed existed, did not impose, or did not agree with. Where the District has complied, or substantially complied, with all program requirements, we believe Finding 1 is inappropriate and for the District to be penalized under this finding, particularly where the District has complied with state law contracting requirements. Therefore, we request that draft Finding 1 be reconsidered and withdrawn.

**OIG Response:** Finding 1 has been modified based on the District's comments, but our recommendation remains unchanged.

During our review of documents submitted by PUSD, we did not receive a document dated January 7, 2007; however, we did receive an agreement between the service provider and PUSD titled "Agreement To Be Submitted with Pricing Package," dated January 24, 2007 signed by the service provider.

In regards to the LOI, the very nature of a letter of intent is that it documents a preliminary understanding(s) of parties who intend in the future to enter into a contract. The designation of a document as a "letter of intent" in the last sentence of the LOI, implies, unless circumstances suggest otherwise, that parties intended it to be a nonbinding expression in contemplation of a future contract, as opposed to its being a binding contract. It is significant that the parties did *not* specify that the LOI was subject only to the approval of the terms and conditions of a formal agreement. In fact, the District made clear in the LOI that there were three preconditions.

Regarding the District's contention that OIG is 1) imposing on the applicant a requirement for the Board to approve the contract *prior* to submitting the Form 471 and 2) implying that E-Rate regulations for competitive bidding change or preempt state laws,

OIG takes no such position and in fact relied on restrictions in applicable California law to make its findings. Because of language in California Education Code 17604, the Agreement provided by the District was not a "valid" contract on February 7, 2007 (the date the application was submitted). The contract did not become valid and enforceable as to obligations to the District until the contract was ratified by the Board on August 11, 2011. Since the Agreement was only signed by the service provider, it was not binding on the District.

With regard to the Board meeting minutes noting the consultant contract for E-Rate services, we disagree that this would satisfy the requirement under state law to approve the contract with a service provider for E-Rate internal connections products and services. With regard to the District's not receiving notification that the Form 471 was incomplete or deficient, there is no commission rule or policy that such notice be given. We suggest the District and/or its consultant better utilize the outreach services of the USF Program Administrator to understand the instructions for completing application forms.

**USAC Management Response:** FCC Schools and Libraries Program Rule 54.504(c) states, "an eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart, shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator." The applicant filed their FCC Form 471 prior to signing a contract for services with the relevant service provider. USAC management concurs with the finding, effect and recommendation and will seek recovery of \$2,153,888 which is the total amount disbursed for FRN 1607326.

**OIG Response:** We concur with USAC action in response to our recommendation.

**Finding 2: Failure to Verify Cost Effectiveness of Single Bid**

**Condition:** We could not determine if PUSD sufficiently evaluated the cost effectiveness of the single bid they considered under FRN 1607326. PUSD failed to provide documentation that would demonstrate its compliance with FCC's cost effectiveness requirements.

PUSD received two bids for internal connections related to FRN 1607326. However, PUSD stated that one bid was "non-responsive" due to exceptions the service provider had taken to the bid criteria. PUSD retained and provided pages of the bid response that confirmed exceptions were taken by the service provider. PUSD determined that the bid was not acceptable and returned it to the service provider without evaluating the pricing response. Therefore, we could not evaluate all the bids received.

Also, PUSD could not show a sufficient evaluation of the sole bid accepted in order to determine if the price was the most cost effective means of meeting educational needs

and technology plan goals. PUSD provided a memorandum dated January 30, 2007 written by PUSD's consultants that concluded that the sole bid's price was reasonable based upon the consultant's review and experience. Per the memorandum, upon review of the pricing response and based on previous experience with other districts of the same size and with many of the same requirements, the service provider's price was found to be consistent. But PUSD and its consultant failed to produce any supporting documentation relied upon to fill out its application such as:

- documents describing the bid evaluation criteria and weighting;
- bid evaluation worksheets;
- all bids submitted and
- all written correspondence between beneficiary and prospective bidders.

Without supporting documentation, we could not determine if PUSD's evaluation of the cost effectiveness of the sole bid was sufficient.

**Criteria:** Per the 2007 Edition of the C.F.R. 47 C.F.R. § 54.504(b)(2)(vii), the School/District shall consider all bids submitted and select the most cost-effective service offering, with price being the primary factor considered, and is the most cost effective means of meeting educational needs and technology plan goals.

Per 47 C.F.R. § 54.516(a)(1), the School/District shall retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least five years after the last day of service delivered in a particular year. Any other document that demonstrated compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well.

Per the FCC's Fifth Report and Order, FCC 04-190 at ¶ 48, Bidding Process - All documents used during the competitive bidding process must be retained. Beneficiaries must retain documents such as: Request(s) for Proposal (RFP(s)) including evidence of the publication date; documents describing the bid evaluation criteria and weighting, as well as the bid evaluation worksheets; all written correspondence between the beneficiary and prospective bidders regarding the products and service sought; all bids submitted, winning and losing; and documents related to the selection of service provider(s).

**Cause:** PUSD did not retain documentation to support their application for E-Rate discounted services including support of a cost effective analysis.

**Effect:** Based on the documentation retained by the District, we could not determine if the bid was the most cost effective means of meeting PUSD's educational and technology plan needs.

**Recommendation:** We recommend that, in the future, PUSD evaluate and document the cost effectiveness of sole source bids and maintain all bid documentation as required.

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For this reason we also recommend USAC seek recovery of \$2,153,888 disbursed from the USF.<sup>3</sup>

**Beneficiary Response:** The DAR concludes the District did not evaluate the cost effectiveness of the one bid received nor did they retain a complete copy of the only other bid that was deemed “non-responsive.” (DAR, pg. 5.) However, the evaluation of “cost-effectiveness” in the case of a one bid response is not supported by any FCC rule or precedent and should be extricated from any final report. According to the USAC web site discussing this issue, it states:

**When is this determination made?**

USAC’s principal evaluation of cost effectiveness occurs during the PIA review process. It can involve an individual funding request or all funding requests for an entity.

**What should applicants do?**

When selecting a service provider, applicants should be sure that the pricing and configuration of the service provider’s bid can withstand scrutiny for cost effectiveness. If you are selected for a cost effective review and you believe the pricing and configuration being requested is appropriate, work with your service provider to prepare a justification for costs that appear excessive, and provide complete and accurate responses to USAC if questions arise.

Contrary to the DAR, the cost effectiveness of the bid received was reviewed. Per the “bid response analysis” that was prepared [REDACTED] formerly with [REDACTED], the District’s E-rate consultant at the time, “[u]pon review of the pricing response and based on previous experience with other districts of the same size and many of the same requirements, [REDACTED] price was found to be consistent.” We believe this information was previously provided to you. The DAR completely ignores this fact.

Per the DAR, “due to the lapse in time since the bids were prepared, we were not able to determine if prices were reasonable.” Although three years have elapsed, we see no reason why a cost effectiveness determination could not be made by the FCC, particularly given that the audit period is up to five years under FCC rules, and that Cost Effectiveness Reviews are routinely performed and take place 1-1 ½ years or more after filing an application. We believe the FCC has ample data available to it to conduct a Cost Effectiveness Review and we are confident such a review would demonstrate the reasonableness of the costs involved.

Moreover, the DAR is unclear in that it does not indicate whether or not the District failed to maintain all required bid documents of the successful service provider. There

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<sup>3</sup> The recovery amount is the same as the recovery amount recommended in Finding 1, the total USF disbursement for the FRN audited.

was only one bidder, because of the determination that the other bid was non-responsive. We believe that a complete copy of this bid was retained by the District and a copy provided to the FCC as part of the audit. A second bid was submitted but was returned because of exceptions taken. (The DAR confirmed that exceptions were taken by that bidder.) We see no requirement to retain records of a non-responsive bid under the regulations.

For these reasons, we request that draft Finding 2 should be reconsidered and withdrawn.

**OIG Response:** We have revised the final report to clarify our position and address the District's comments, but our recommendation remains unchanged.

The Beneficiary is responsible for keeping all documents related to the application, receipt, and delivery of discounted telecommunications and other supported services for at least five years after the last day of service delivered in a particular year. All documents used during the competitive bidding process must be retained. Beneficiaries must retain documents such as: Request(s) for Proposal (RFP(s)) including evidence of the publication date; documents describing the bid evaluation criteria and weighting, as well as the bid evaluation worksheets; all written correspondence between the beneficiary and prospective bidders regarding the products and service sought; all bids submitted, winning and losing; and documents related to the selection of service provider(s). Although a memorandum, provided by the District, stated that PUSD's consultants reviewed the pricing response and based on previous experience with other districts found that the service provider's price was consistent, we could not find any documents to support the memorandum's conclusion, nor that appropriate evaluation was done.

**USAC Management Response:** As recommended in the audit report, the Beneficiary should document that one bid was disqualified. The Beneficiary should also memorialize its decision that the sole bid selected was the most cost effective means of meeting the educational needs. USAC encourages applicants to memorialize their competitive bidding decisions by retaining a memorandum stating a sole bidder responded and an explanation as to why the bid selected was the most cost effective solution, with price being the primary factor. Although the applicant failed to memorialize its decision, USAC should not presume a cost effective solution was not selected. USAC will conduct applicant outreach to obtain the competitive bidding documents and perform a cost effectiveness review. USAC will then determine if recovery is warranted consistent with FCC Rules and Orders. Going forward the Beneficiary should memorialize its competitive bidding selections noting that all bids were carefully considered and the bid selected is the most cost effective service or product, with price being the primary factor.

**OIG Response:** We concur with USAC action in response to our recommendation.

### **Finding 3: Inadequate Asset and Inventory Records**

**Condition:** For internal connections FRN 1607326, PUSD did not update and maintain adequate E-Rate asset and inventory records. In June 2008 and April 2010, PUSD conducted a district wide inventory for its financial statement audits, but did not differentiate E-Rate equipment from non E-Rate equipment. There was no evidence that PUSD conducted an E-Rate inventory prior to our audit announcement. After our audit announcement and prior to our fieldwork, PUSD performed a walk-through of its schools to record E-Rate assets.

We prepared a list of E-Rate equipment based on invoices and compared our list to PUSD's asset and inventory list. Using our list, we conducted an inventory by visiting schools to verify E-Rate equipment was delivered, installed and used for educational purposes. During our sampling of E-Rate equipment, we found that PUSD's asset and inventory records were not sufficient to locate the equipment and determine whether or not it had been delivered and installed at PUSD prior to the certification of delivery on the Form 486. We needed additional information from PUSD to locate equipment due to unapproved substitutions and missing information. We discovered that 54 pieces of E-Rate equipment were not located in the school indicated on the invoices. We were able to locate the correct quantity of the type of equipment, such as a server, but could not match the serial number or the model number of the equipment with the asset and inventory records. PUSD Network Coordinator informed us that the E-Rate equipment had been moved to other schools as needed. The other schools, where the relocated equipment was found, were included in the Form 471 under FRN 1607326.

Because of the lack of inventory records, we performed additional testing of shipment packing receipts to confirm receipt and location of equipment, the dates received and installed. PUSD was unable to produce all of the shipment packing receipts.

Additionally, we found that some shipment packing receipts were not reviewed, signed and dated consistently by PUSD to document receipt of equipment. Subsequently, we were unable to verify if equipment was received by PUSD prior to payment from USAC.

**Criteria:** Per the 2007 Edition of the C.F.R. 47 C.F.R. § 54.516 (a)(1) the School/District shall maintain asset and inventory records of equipment purchased as components of internal connections services sufficient to verify the actual location of such equipment. Records are required for a period of five years after purchase. Form 486, Receipt of Services Confirmation Form, instructions require the eligible school district to inform USAC when services are received to authorize payment of invoices from the service provider(s).

**Cause:** PUSD relied on District-wide records that did not have sufficient detail to locate E-Rate assets.

**Effect:** Although the equipment was ultimately accounted for by our inventory and expanded testing of shipment receipts, the lack of sufficient inventory records could have resulted in loss and or waste of E-Rate assets – a weakness in internal controls. As a result of all the equipment being accounted for, there is no monetary effect.

**Recommendation:** We recommend PUSD maintain asset and inventory records with sufficient information to verify the location of all E-Rate funded equipment. We also recommend, in the future, PUSD confirm and document equipment deliveries to ensure that the ordered equipment is received, installed and properly recorded.

**Beneficiary Response:** The DAR found that the Auditors could not differentiate E-Rate from Non-E-Rate equipment. The DAR identifies 54 pieces of equipment that were present on the invoices that auditors initially could not locate at a school site. However, the DAR ultimately notes “[t]here is no monetary effect since the equipment was ultimately accounted for by PUSD.”

We are uncertain why this is even a finding since, as the DAR notes, the equipment in question was ultimately accounted for by the District. Additionally, and as was explained during the on-site visit, some of the equipment was initially believed to be in a storage facility during extensive construction and rebuilding of the Pittsburg High School, which is not yet complete, as well as service substitutions. This unique circumstance made physical location of the equipment more difficult, although it did ultimately occur.

**OIG Response:** The fundamental issue remains that we could not locate the E-Rate funded equipment, an internal control weakness and a FCC rule violation, using PUSD’s fixed asset listing (“FAL”). We were unable to verify the location of equipment due to missing serial numbers and model numbers in the FAL and some equipment purchased was not listed in the FAL. We made assumptions to match items based on descriptions in the service provider invoices. Since similar equipment was found to match purchased items on invoices, we did not recommend recovery of funds.

This issue did not only exist with equipment located at Pittsburg High School. We could not locate equipment at other schools in the District. During our inventory, a PUSD representative stated that items were substituted directly with the service provider and/or relocated to different schools within the district. PUSD did not have documentation to verify substitutions and transfers of equipment. We also could not verify if equipment was received at PUSD prior to disbursement of USF.

Due to the lack of adequate asset and inventory records for internal connections equipment, E-Rate equipment is vulnerable to loss and theft. When equipment is moved, it needs to be documented so that it can be located and inventoried. Internal controls such as asset records are needed to ensure that equipment is delivered and installed before certification to USF that funds can be disbursed.

**USAC Management Response:** Going forward, the applicant should familiarize themselves with the FCC's Fifth Report and Order, which clarified the record keeping requirements. For further guidance, the applicant should refer to USAC's website specifically "Demonstrating Compliance with Program Rules" located in the Schools and Libraries Reference Area. The applicant should refer to other reference documents located on USAC's website such as E-rate Binder, Samples and Examples, Applicant Training Presentations, etc. USAC management concurs with the finding, effect and recommendation. In addition, USAC will conduct a HATS visit to offer targeted training and outreach that may help the Beneficiary.

**OIG Response:** We concur with USAC action in response to our recommendation.

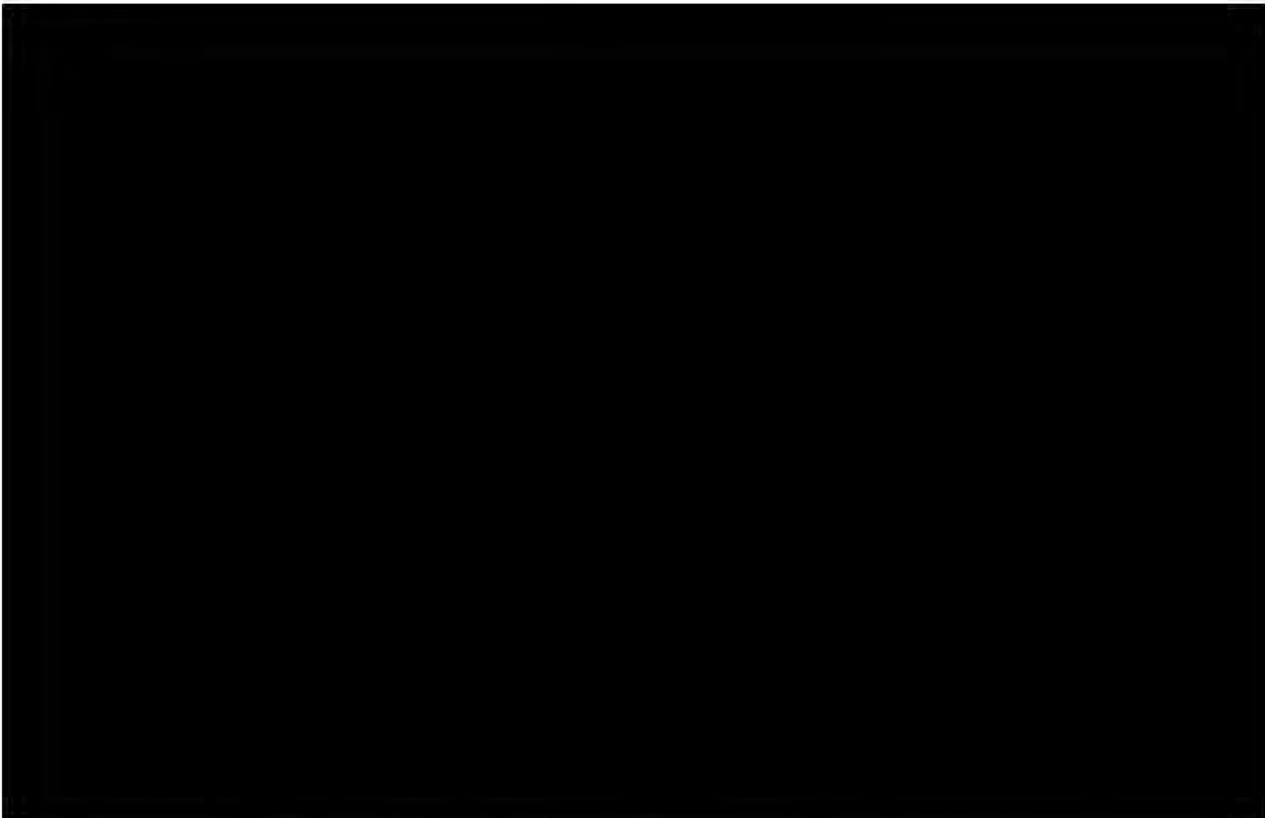
#### **Finding 4: Service Provider Over-charges**

**Condition:** The PUSD service provider for internal connections FRN 1607326 over-billed USAC by \$11,260 for cabling. The service provider billed USAC based on estimates that were higher than actual costs. PUSD provided cabling test reports created by the service provider upon completion of the cabling installation. The cabling test reports document and serve as verification of length (in feet) of cabling installed, as well as functionality of the cabling installed in each school. We compared the cabling test reports to Service Provider Invoices ("SPI") submitted to USAC for payment. Based on the cabling test reports, we found that the invoiced cabling quantity exceeded the amounts installed in each school. PUSD personnel did not verify the amounts of cabling installed or use the test reports to verify amounts installed.

We asked the service provider for support for actual cabling installed. The service provider stated that the amounts billed were based on the cabling installed. They also stated that the installed cabling amounts would be the amount tested plus 30% to 40% waste on a normal job. We asked for support of the amount of waste, but the service provider did not have any support. Two days later, the service provider stated that they did not test all of the cabling and are going to re-test to determine the amount of cabling installed. The school does not have a method to verify the re-testing is accurate. Also, we would not be able to verify the new test reports.

Table 1 shows the results of our review comparing invoiced and actual cabling (the service provider test report amounts) to determine service provider over-charges:





**Criteria:** Per the 2007 Edition of the C.F.R. 47 C.F. R. § 54.505(a), the School/District shall apply its discount percentage to the pre-discount price. Form 473, Universal Service for Schools and Libraries Service Provider Annual Certification Form, instructions, require the service provider to certify that: 1) the data set forth in the Form is true, accurate and complete and 2) the invoice forms submitted by the service provider contain requests for universal service support for eligible services which have been billed to the applicants. Form 486, Receipt of Services Confirmation Form, instructions require the eligible school district to inform USAC when services are received to authorize payment of invoices from the service provider(s).

**Cause:** The service provider billed PUSD based upon bid estimates rather than actual amounts and PUSD did not verify the amounts of cabling delivered.

**Effect:** USAC overpaid the service provider for cabling. We identified \$11,260 in overpayments based on test reports from four locations. Additional overpayments may have occurred regarding nine other PUSD locations that were not tested.

**Recommendation:** We recommend, in the future, PUSD validate the cabling installed before submitting certification of equipment received. We also recommend USAC seek

recovery of \$11,260 of USF funds resulting from the service provider invoicing for estimates that exceeded the actual cable footage installed.<sup>4</sup>

**Beneficiary Response:** No comment provided on this finding.

**USAC Management Response:** On FCC Form 473, Service Provider Annual Certification Form, Block 2, Item 10, the service provider certifies that the Service Provider Invoices Form (FCC Form 474 or SPI) submitted by the service provider "contain requests for universal service support for services which have been . . . deemed eligible for universal service support by the fund administrator." Since the service provider invoiced USAC in excess of actual cabling installed USAC will seek recovery of \$11,260 identified by the auditors from the service provider. USAC management concurs with the finding, effect, and recommendation.

**OIG Response:** We concur with USAC action in response to our recommendation.

**Finding 5: Services to an Ineligible Non-Instructional Facility**

**Condition:** Under FRN 1607326, PUSD applied for internal connections support and USF monies were disbursed in the amount of \$4,651 for a non-instructional facility ("NIF") that did not have an educational use. PUSD's service provider installed and was reimbursed for fiber cabling from PUSD's maintenance office to the food service facility. The food service facility is an NIF. NIFs are eligible for Priority 1 services (telecommunications services and Internet access) and are only eligible for Priority 2 services (internal connections and basic maintenance of internal connections) if they are necessary for the transport of discounted services to classrooms of a school or to public areas of a library. The maintenance office is eligible for discounted services because the maintenance office was directly connected and a conduit to classrooms. The maintenance office is also a conduit to PUSD's food service facility. But the food service facility was not used for educational purposes and was not a conduit or connected to any other building utilized for educational use and therefore, not eligible for USF internal connections support. As a result, the cabling installed at the food service facility was not eligible for support under this FRN and should not have been included in the Form 471 number 580458.

**Criteria:** Per the 2007 Edition of the C.F.R. 47 C.F.R. §54.506(a) a service is eligible for support as a component of an institution's internal connection if such service is necessary to transport information within one or more instructional buildings of a single school campus. Discounts are not available for internal connections in non-instructional buildings of school or district, unless those internal connections are essential for the effective transport of information to an instructional building of a school.

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<sup>4</sup> The recovery amount is part of the recovery amount recommended in Finding 1, the total USF disbursement for the FRN audited.

**Cause:** PUSD inadvertently included the food services facility in the internal connections FRN 1670236 Form 471 Number 580458. PUSD's service provider invoiced USF for cabling to provide connections to the food services facility that was not used for educational use, not connected to any building used for educational use, nor was it necessary for the transport of discounted services to classrooms.

**Effect:** USAC improperly disbursed USF in the amount of \$4,651 (89% discount of \$5,226) for a NIF.

**Recommendation:** We recommend, in the future, PUSD review its Form 471s to ensure that only eligible entities are included. We also recommend recovery of \$4,651 disbursed from the USF for internal connection services for an ineligible entity.<sup>5</sup>

**Beneficiary Response:** No comment provided on this finding.

**USAC Management Response:** The FCC rules indicate that a Non-Instructional Facility (NIF) is eligible for Priority 2 services (internal connections and basic maintenance of internal connections) if the NIF is necessary for the transport of discounted services to classrooms of a school or to public areas of a library. The food service facility was not a conduit for the effective transport of information to an instructional building of a school; therefore, the food service facility is ineligible for Priority 2 funding. Going forward, the Beneficiary should only include eligible entities on FCC Form 471.

In addition, Pursuant to FCC Rules 47 C.F.R. § 54.501(a) and 47 C.F.R. § 54.517, USAC is authorized to make disbursements for eligible products and services. On FCC Form 473, Service Provider Annual Certification Form, Block 2, Item 10, the service provider certifies that the Service Provider Invoices Form (FCC Form 474 or SPI) submitted by the service provider "contain requests for universal service support for services .....as deemed eligible for universal service support by the fund administrator." Since services were delivered to an ineligible entity USAC will seek recovery of \$4,651 identified by the auditors from the applicant. USAC concurs with the finding, effect, and recommendation.

**OIG Response:** We concur with USAC action in response to our recommendation.

#### **Finding 6: Unapproved Equipment Substitutions**

**Condition:** Under FRN 1607326, PUSD did not request or receive approval for equipment substitutions. We conducted a physical inventory of the equipment funded

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<sup>5</sup> The recovery amount is part of the recovery amount recommended in Finding 1, the total USF disbursement for the FRN audited.

under this FRN. We could not locate all equipment invoiced to USF by the service provider because PUSD's inventory did not identify all model and serial numbers of the E-Rate equipment. We found 45 pieces of E-Rate tagged equipment listed on the Form 471 number 580458 (Attachment 21) and the SPI that were not the products purchased, but were similar in function. The PUSD Network Coordinator explained that PUSD's service provider substituted equipment based upon various reasons including the equipment was "too large for the space." PUSD did not notify USAC or request approval for the substitutions from USAC as required. PUSD did not identify or negotiate any price difference for the substituted equipment.

**Criteria:** Per the 2007 Edition of the C.F.R. 47 C.F.R. § 54.504(f) The Administrator shall grant a request by an applicant to substitute a service or product for one identified on its FCC Form 471 where the service or product has the same functionality; does not violate any contract provisions, or state or local procurement laws; does not result in an increase in the percentage of ineligible services or functions; and the applicant certifies that the requested change is within the scope of the Form 470. In the event that a service substitution results in a change in the pre-discount price for the supported service, support shall be based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service.

**Cause:** We could not determine why PUSD did not notify USAC and get approval for service substitutions.

**Effect:** Due to the lapse in time, we could not determine if the substitutions should have resulted in a refund to USF.

**Recommendation:** We recommend that, in the future, PUSD request approval for any equipment substitutions.

**Beneficiary Response:** No comment provided on this finding.

**USAC Management Response:** The fact the applicant did not request a service substitution does not alone warrant recovery. USAC will conduct outreach to the applicant to request the documentation of the cost and functionality of the substituted products. USAC will determine whether the substituted equipment is eligible based on the Eligible Services List and if recovery is warranted USAC will seek recovery consistent with FCC Rules and Orders.

**OIG Response:** We concur with USAC action in response to our recommendation.

**Finding 7: Failure to Timely Pay Non-discount Portion**

**Condition:** Under FRN 1607326, PUSD did not pay its non-discount portion within 90 days of delivery of equipment and/or services purchased with universal service discount.

PUSD purchased and received internal connections services and equipment from service providers. Subsequently, PUSD received invoices for these services and/or equipment and did not remit payment within 90 days.

Because PUSD did not maintain adequate records of receipt of equipment as discussed in Finding 3, "Inadequate Inventory Records," we used the stamped "invoice received" date on the service provider invoices as the date equipment was delivered for our testing. We found 13 invoices totaling \$11,010 of the District's share of \$269,496, where the corresponding non-discounted payments were late by 112 to 195 days.

**Criteria:** Per the 2007 Edition of the C.F.R. 47 C.F.R. § 54.523 and the Fifth Report and Order, FCC 04-190, the School/District must pay all non-discount portions of purchased goods and/or services within 90 days after delivery of services.

**Cause:** We could not determine why the Beneficiary did not pay its non-discounted portion of service provider invoices, within 90 days of receiving invoices. Much of the personnel involved, during the funding year, were no longer employed with PUSD.

**Effect:** There is no monetary effect since PUSD paid its non-discounted portion for E-Rate invoices prior to our audit.

**Recommendation:** We recommend PUSD pay its non-discounted portion of all E-Rate invoices within 90 days upon receipt of services and/or equipment.

**Beneficiary Response:** No comment provided on this finding.

**USAC Management Response:** The FCC's Fifth Report and Order clarified that "failure to pay more than 90 days after completion of service (which is roughly equivalent to three monthly billing cycles), presumptively violates our rule that the beneficiary must pay its share." Ultimately, the Beneficiary paid the non-discount portion; therefore, no recovery is required. Going forward, the Beneficiary is aware that payment must be made within 90 days. USAC management concurs with the finding, effect, and recommendation.

**OIG Response:** We concur with USAC action in response to our recommendation.

### **Other Matter to be Reported**

#### **USF Disbursements Exceed Commitments**

For FRN 1607326, USF disbursements exceed commitments by \$3,382 due to an adjustment to the initial commitment. PUSD submitted an initial service substitution request on November 6, 2008 that was approved by USAC on January 14, 2009. At the time, there was no change in committed dollars and USAC granted a deadline extension

until September 30, 2009. Subsequently, PUSD submitted a corrected service substitution on November 10, 2009 that was approved with a reduction of \$19,305 on January 19, 2010. As a result, USAC reduced the FRN 1607326 commitment from \$2,153,888 to \$2,134,493. However, the service provider had previously submitted 79 service provider invoices (SPIs) totaling \$2,137,875 (\$3,382 more than the reduced commitment amount) prior to the January 19, 2010 substitution approval.

In response to our inquiry, USAC has stated that “SLD<sup>6</sup> realizes that this is an issue and will immediately begin the process to recover the \$3,382.30. Also, they are going to begin the process to have an automated control implemented that would prevent the commitment from being revised to an amount below the disbursed amount. In the meantime, SLD is implementing a manual procedure to ensure that this will not happen again.”

**USAC Management Response:** USAC sought recovery of \$3,382.30 from the service provider [REDACTED] issuing a Recovery of Improperly Disbursed Funds Letter on June 6, 2011. On September 14, 2011, the service provider repaid the debt.

The service substitution request was submitted to USAC after the original committed amount was disbursed. When a service substitution request is less than the original commitment USAC will reduce the original commitment, determine if a disbursement occurred, and seek recovery for the difference, if necessary, based on our procedures.

USAC sought recovery; however, the recovery was not processed in a timely manner. The service substitution was completed on January 19, 2010, but the recovery was not completed until June 6, 2011. USAC reviewed this procedure with the team responsible for this process to ensure recoveries are processed timely to avoid this occurrence.

**OIG Response:** We concur with USAC action in response to our report on the District’s disbursements exceeding commitments.

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<sup>6</sup> USAC Schools and Libraries Division